

FCC MAIL SECTION

Federal Communications Commission

DA 99-2711

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DISPATCHED BY Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 97-252
Table of Allotments,) RM-9206
FM Broadcast Stations.)
(Columbia City, Florida))

REPORT AND ORDER
(Proceeding Terminated)

Adopted: November 24, 1999

Released: December 7, 1999

By the Chief, Allocations Branch:

1. In response to a Petition for Rule Making filed by Max Media ("Max"), the Commission has before it for consideration the Notice of Proposed Rule Making, 13 FCC Rcd 245 (1998), requesting the allotment of Channel 243A at Columbia City, Florida. Max filed comments in which it reaffirmed its interest in Channel 243A at Columbia City. Dickerson Broadcasting, Inc. ("DBI") filed comments and a counterproposal.¹ Women in FLA Broadcasting, Inc. ("Women"), Dixie County

¹ DBI, licensee of Station WEAG, Starke, Florida, counterproposed the substitution of Channel 243C3 for Channel 295C1 at Cross City, Florida, substitution of Channel 295C2 for Channel 292A at Starke, Florida, and substitution of Channel 292C2 for Channel 292C3 at Beverly Hills, Florida. DBI contends that its proposal would permit the Commission to close out an allotment proceeding, MM Docket No. 92-195, Report and Order, 8 FCC Rcd 2197 (1993), Memorandum Opinion and Order, 8 FCC Rcd 8515 (1993) and 11 FCC Rcd 4641 (1996), app. for review pending, which involves the communities of Beverly Hills, Chiefland, Holiday, Micanopy and Sarasota, Florida, and provide for significantly expanded service, the elimination of a number of short-spacings and the elimination of significant white and grey areas.

After careful examination of DBI's counterproposal, we find that it is not acceptable for the following reasons. First, DBI's proposed channel change for Station WXOF, Beverly Hills, Florida, Channel 292C3, to Channel 292C2, is contingent on Station WLVU, Holiday, Florida, Channel 292A, changing to Channel 246C2 in MM Docket No. 92-195, which is still an open proceeding. This is due to the fact that Channel 292C2 at Beverly Hills is 93.1 kilometers short-spaced to its licensed operation on Channel 292A at Holiday, thereby violating Section 73.208(a) of the Commission's Rules. That rule section requires that all existing authorizations be cleared by rulemaking proposals. Our policy is not to accept proposals that are dependent or contingent upon finality of other actions or proceedings. See Cut and Shoot, Texas, 11 FCC Rcd 16383 (1996). Second, the proposal for Cross City, Station WDFL, to substitute Channel 243C3 for Channel 295C1 proposes to downgrade an existing facility without consent from the affected station. The Commission will not downgrade a station to accommodate another station's desire to change its facilities unless the affected station consents to the downgrade. See Flora and Kings, Mississippi and Newellton, Louisiana, 7 FCC Rcd 5477 (1992). Similarly, the proposal for Beverly Hills requests an upgrade for Station WXOF from C3 to C2 although Max has stated that the upgrade is not necessary for the other channel changes to take place. Further, according to DBI, Station WDFL, Cross City, could operate on Channel 243C3 from its present site pursuant to Section 73.215 or relocate its transmitter to a fully spaced site.

Broadcasters ("Dixie"), Cox Radio, Inc. ("Cox"), Dickerson and Max filed reply comments.²

2. In response to the Notice, Max filed additional information regarding community status for Columbia City.³ According to Max, Columbia City is a well-recognized rapidly growing community at the intersections of State Route 47 and County Road 240 in southwestern Columbia County and that the community is identified by road signs. Max states that there is a Columbia City Elementary School and Columbia City Volunteer Fire Department in the community along with a variety of local institutions and businesses. Max further states that more than 350 building permits for new homes have been issued in the Columbia City Elementary School attendance zone each year for the past five years and that the postal department established a new zip code for Lake City to accommodate the rising demand for postal services resulting from the growth in the Columbia City Area. Max also provided data from the supervisor of elections for Columbia County showing an increase in the number of registered voters in the Columbia City area during recent years. Max provided declarations from numerous business owners and residents of the Columbia City area providing comments supporting community status for Columbia City. Max believes that Columbia City is a community which needs and deserves its own local aural transmission service.

3. Based on the totality of the evidence submitted by Max, we believe that it has failed to establish that Columbia City qualifies as a community for allotment purposes and therefore it would not serve the public interest to make a channel allotment in response to Max's proposal. See Mokelumme Hill, California, 4 FCC Rcd 7109 (1989). While Max states that Columbia City is a growing community, has an elementary school and fire department along with churches and local businesses, it has not specifically identified these entities with Columbia City addresses or shown that they are intended to serve Columbia City, as opposed to an expanded rural area. This is a critical deficiency because, in past cases, we have rejected claims of community status where a nexus has not been shown between the political, social and commercial organizations and the community in question. See Gretna,

Commission policy will not force a station to relocate to accommodate DBI's proposal and the Commission has specifically noted that it did not contemplate the use of contour protection methods at the allotment stage. See Report and Order, MM Docket No. 87-121, 4 FCC Rcd 1681 (1989) and Thomasville, Alabama, MM Docket No. 90-563, 7 FCC Rcd 4463 (1992). Third, although DBI acknowledges the question of reimbursement to affected stations, DBI states that it should not be required to reimburse the Beverly Hills Station or Cross City station as the upgrade at Beverly Hills is not necessary to accommodate the other proposed changes and the station at Cross City has been subject to a relocation requirement for several years and has failed to do so. Here we disagree. Station WDFL, Cross City, is entitled to reimbursement expenses that are directly related to changes that accommodate DBI's proposal for Starke, Florida, should these changes take place. Therefore, DBI's counterproposal required a reimbursement pledge.

² In view of the decision in this proceeding, the comments and reply comments filed in response to DBI's counterproposal have not been considered in this proceeding.

³ The Notice pointed out that although Columbia City can be located on a map, it is not incorporated, listed in the U.S. Census, and does not have its own post office or zip code.

Marianna, Quincy and Tallahassee, Florida, 6 FCC Rcd (1991), and cases cited therein. Although Max has provided some information supporting community status, such as a local school and fire department, the school is administered by the county and the fire department is housed in a county facility. Further, names of the Columbia City businesses provided by Max have a Lake City mailing address as do the local churches according to their letterhead. Max provided a number of form letters signed by area residents attesting to community status for Columbia City but the majority listed a post office box or a Lake City mailing address rather than a Columbia City address. Max failed to provide information concerning the existence of any type of local government such as the name and address of the mayor or council members, evidence that rural residents view Columbia City as a center for shopping or medical services, excerpts from a telephone book showing Columbia City's separate telephone exchange, all things which support community status. Columbia City is located approximately 10 miles from Lake City (population 11,300), approximately 40 miles from Gainesville (population 91,300), approximately 20 miles from Live Oak (population 6,332), and is located within 60 miles of Jacksonville (population 694,500) and cannot be considered an isolated community concerned with survival issues such as Cal-Nev-Ari, Nevada, to which the Commission recently allotted a first local service. See Cal-Nev-Ari, Boulder City, and Las Vegas, Nevada, MM Docket No. 93-279, MO&O released October 8, 1999 (DA No. 99-2115). Cal-Nev-Ari, unlike Columbia City, has its own post office and zip code and the Rand McNally Commercial Atlas ("Atlas") provides a population of 350 people for the community whereas no population figure is provided for Columbia City in the Atlas.

4. IT IS ORDERED, That the Petition for Rule Making filed by Max Media (RM-9206) IS DENIED.
5. IT IS FURTHER ORDERED, That the counterproposal filed by Dickerson Broadcasting, Inc. IS DISMISSED.
6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.
7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau